1941

File No. O. Letters Patent /41

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Letters Patent Act

P-7

File No. O. Letters Patent-/41

Std. Sectt. Slip 24 B -

280-A

Submitted.

The Bar Council has passed a resolution recording its opinion that the present provision of law that there is shall be no appeal from any sentence or order passed by the High Court in the exercise of its original criminal jurisdiction is unsatisfactory and retrograde and that a right of appeal should be given to the accused from such sentence or order on questions of law and also on questions of fact where the verdict of the jury is not unanimous and that the precedure of the grant of a certificate by the Advocate General under clause 26 of the letters Patent is totally inadequate and opposed to principle in as much as the Advocate Generalis often placed in the position of a prosecutor and a judge. The High Court while forwarding the resolution as a has recommended that there should be a right of appeal from the High Court in its original criminal jurisdiction to a Bench consisting of not less than two judges; that clause 25 of the Letters Patent should be repealed and tha the right of appeal should be on the general lines contained inthe Criminal Appeal Act, 1907 (7 Edw.7 c. 23). The R.L.A. is requested to advise in the matter.

2. Clause 22 of the Letters Patent of the Bombay High Court dated 23-12-1865 invests the High Court with ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction. Clause 25 provides that there shall be no appeal to the said High Court from any sentence or order passed

the Court of original criminal ~~&~~ Juriadiction which may be ~~considered~~ constituted by one or more Judges ofthe said High Court. But it shall be at the ~~discretion~~ discretion of any such Court to reserve any points of law for the opinion of the said High Court. Clause 26 provides that o. such point or points of law being so reserved as aforesaid or on ~~x~~ its judgement there is an error in the decision of a pointof points if law decided by the Court of original criminal Juriadiction; or that a point or points of la w which has or have been decided by the said Court should be further considered the said High court shall have full power and authority to r review the case, or such part of it as may ~e necessary and finally determine such point or points of law. and thereu on to alter the sentence passed by the Court shall seem right. It is ~~xxxxxx~~remarked by the Hig.. Court that the right of appeal should be on the general limes of the ~~Original~~ Criminal Appeal Act, 1907, (7 Ed. 7 C. 23). Under section 3 of that act a person convicted on indictment can appeal to the Court of Criminal Appeal--

(a) against his ~~xxxxxx~~ conviction on any ground of appeal which involves a question of law alone;

(b) with the leave of the Court of Criminal ~ppeal or upon the certificate of the Judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ which involves a question of fact alone, or a question of mixed law and fact, or any otherground which appears to the Court to be a sufficient ground of appeal and

(c) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction; unless the sentence is one

fixed by law.

Their Lordships however propose that the appeal should be restricted to a questions of law alone and not allowed on questions of fact since all trials in the High Court Sessions are with a Jury. In addition it should not be permitted unless a certificate of the trial Judge or the leave of the Court of Appeal has been obtained. An appeal as regards sentence only -- is not recommended. The High Court states that there is a considerable volume of opinion among the public and the members of the Judicial Bench that a right of appeal as above should be allowed. The proposals made by the High Court appear to be desirable in the interest of the administration of criminal justice and perhaps R.L.A. may advice Government accordingly.

3. Under clause 44 of the Letters Patent the provisions thereunder were subject to the legislative C____ll and also of the Governor General in Legislative Council and also of the Governor General in Council under section 71 of that Act and could be amended and altered thereby. Section 223 of the Government of India Act. 1935 provides inter alia that subject to the provisions of part IX, to the provisions of any Order in Council and to the provisions of any Act of the appropriate Legislature enacted by virtue of power conferred on that legislature by the Government of India Act, 1935, the jurisdiction of any existing High Court shall be the same as immediately before the commencement of Part III. Under

items 1 and 2 in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, the Provincial Legislative can legislate as regards the jurisdiction and powers of the High Court with respect to the administration of justice. It would appear therefore that it would be competent for the Provincial Legislature to invest the High Court with the ~~appellable~~ appellate criminal jurisdiction by amending the Letters Patent

Sd./18-2-41

The Advocate General may be requested to offer his remarks on the proposals now under consideration

ALR

Sd/
25-2-41

UR to the Advocate General ~~xxx~~
No 1987 dated 6-3-1941

I am entirely in favour of the view that it is necessary to give a right of appeal to accused persons from sentences or orders passed by the High Court in its Original Criminal Jurisdiction.

2. It is anomalous that there should be no such right of appeal when a civil litigant has a right of appeal against every decree passed by the High Court in its Ordinary Original Civil Jurisdiction and against a large number of orders passed by it in the exercise of that jurisdiction. This anomaly is further emphasized by the fact that an accused person outside the City of Bombay has a right of appeal to the High Court on its Appellate side in the manner provided by the Code of Criminal Procedure.

3. In my view the proposal of the High Court to restrict the right of appeal in the manner mentioned in their letter is not justified and that a wider right of appeal should be given to accused persons. In England where in all proceedings by way indictment the trial takes place by Jury, the accused person has a right of appeal against the conviction as a matter of course on any ground of appeal which involves a question of law alone and with the leave of the Court of Criminal Appeal or upon a certificate of the Judge who tried the accused that it is a fit case for appeal on any ground of appeal which involves a question of fact alone or a mixed question of law and fact or on any other ground which appears to the Court to be a sufficient ground of appeal. The English Act also gives a right of appeal with the leave of the Court of Criminal Appeal against the sentence unless the sentence is one fixed by law. I think that a right of appeal should be given on the same lines as in the English Act.

4. It may be mentioned that the proposed restricted right of appeal is of lesser scope than the one given in cases from the mofussil to the High Court under the provisions of the Criminal Procedure Code. In my view there is at any rate no reason why an accused person sentenced in Bombay should have a more restricted right of appeal than a person convicted and sentenced outside Bombay.

Advocate General

Office of the R.L.A.

copy of the Advocate General's opinion dated 23rd March 1941 in the matter of the is forwarded herewith.

2. Although I am in general agreement with the opinion of the Advocate General, the fact cannot be ignored that the conditions obtaining in the mofussil are not quite the same as in Bombay. The Bombay jurors are drawn from a relatively more intelligent strata of society than their mofussil brethren and as the conduct of cases in the High Court by a well qualified Bar reaches a higher level than in the mofussil courts, the Bombay jury is better able to return a fair and proper verdict. Moreover the Sessions cases in Bombay are all triable by jury whereas in the mofussil only the important cases- generally or offences offences punishable with imprisonment of 10 years or more are jury cases. To allow an appeal from all High Court Sessions cases, both on questions of law and fact would add enormously to the work of the already overburdended Appellate Bench. It would in the circumstances be more advisable to advance by stages and allow for the present only a limited right of appeal as suggested by the High Court.

sd. 18/4

Remembrancer of Legal Affairs.

D.O. to H.D. No. 3436 dated the 19th April 1941.